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December 11, 2018

Via Email to Byron_thomas@txs.uscourts.gov

Honorable Vanessa D. Gilmore
Judge, United States District Court
515 Rusk Street, Courtroom 9A
Houston, Texas 77002

Re: Civil Action No. 11-00695; *Align Technology, Inc. vs. ClearCorrect, Inc., ClearCorrect Operating, LLC, and ClearCorrect Holdings, LLC*; In the United States District Court, Southern District of Texas, Houston Division

Dear Judge Gilmore:

Discovery closed on December 1, and the parties have been unable to resolve three related disputes:

(1) ClearCorrect objected to Align's request to supplement its damages expert report. Nearly a year has passed since Align's expert completed his report. He must supplement his opinions to account for supplemental financial data dated from July 2017 until October 2018, which ClearCorrect produced on November 21 and 30, 2018. ClearCorrect has agreed only that Align's expert may supplement with mechanical computations. However, ClearCorrect's financials are not the only thing that has changed. Align's proposed supplementation must also account for Align's updated data, and new products and market information. Align requests that the Court set appropriate deadlines for the experts' supplemental reports and depositions, and for further supplementation closer to trial.

(2) Seven court days before discovery closed, ClearCorrect served its First Amended Initial Disclosures listing 167 new witnesses. On the last day of discovery, ClearCorrect served its Second Amended Initial Disclosures listing yet another new witness. Despite these late and improper disclosures, absent agreement on issue (1) above, ClearCorrect has refused to identify which newly listed individuals (if any) it intends to call at trial, or to provide Align the opportunity to depose those witnesses. Align requests that all 168 new names be stricken from the Amended Disclosures, and that the individuals listed be barred from testifying at trial.

(3) ClearCorrect refuses to present a witness as required by Align's second Fed. R. Civ. P. 30(b)(6) deposition notice served November 16, 2018. Align's notice covers information ClearCorrect provided *after* its prior 30(b)(6) witnesses were deposed, including ClearCorrect's recent financial data productions. The deposition did not proceed as noticed because

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ClearCorrect had not completed its production of corrected financial information. ClearCorrect has neither objected to Align's notice nor explained its failure to reschedule the deposition now that its corrected production is complete. Align requests that ClearCorrect be compelled to produce a witness in response to Align's notice.

Sincerely,



Lee L. Kaplan

LLK/ma

cc: Counsel for Defendants